

OPINION NUMBER 92-1

DATE: April 29, 1992

SUBJECT: Culture, Commerce and Technology Complex on
Tidelands Property; Legality of Proposed
Construction and Operation

REQUESTED BY: Mayor Maureen O'Connor

PREPARED BY: City Attorney

QUESTION PRESENTED

Will a multi-purpose Culture, Commerce and Technology Complex, incorporating, among other public facilities, a library, a navigation and fisheries center, a business and commerce center, and a bay front park, promote the purposes of developing the ports of the state for navigation, commerce, fishing and recreation, in order that construction of such a complex on Tidelands property will comply with existing laws?

CONCLUSION

In its entirety, the proposed multi-purpose Culture, Commerce and Technology Complex ("Complex") fosters the statewide interest in developing California's harbors. Many of the functions and facilities offered by the Complex are expressly approved by the San Diego Unified Port District Act ("Act"), 1962 Cal. Stat. ch. 67. Further, the Complex encourages commerce, navigation, fisheries and recreation. Therefore, it advances the purposes of the Tidelands trust and would be a legally valid use of those grounds under existing law.

BACKGROUND

In 1911, the State of California granted certain property, including the land in question, to the City of San Diego to be retained in trust for the benefit of the people. These "Tidelands" were conveyed to the City in fee, with the understanding that their distinctive and exceptional features existed for the benefit of the State as a whole, and that the citizens of California had a statewide, collective pursuit to cultivate and preserve these lands. The City, therefore, held the land subject only to the objectives of the trust: to promote navigation, commerce and fishing.

Whereas, since the admission of California into the Union, all tidelands along the navigable waters of this state and all lands lying beneath the navigable waters of the state have been and now are held in trust by the state for the benefit of all the inhabitants thereof for the purposes of

navigation, commerce and fishing . . .
. . . The City of San Diego shall
have and there is hereby granted to it the
right to make upon said premises all
improvements, betterments and structures of
every kind and character, proper, needful and
useful for the development of commerce,
navigation and fishing, including the
construction of all wharves, docks, piers,
slips, and the construction and operation of
a municipal belt line railroad in connection
with said dock system . . . " Stats. 1911,
ch. 700, p. 1357, as amended.

In 1963, pursuant to Section 14 of the Act, the City transferred the bulk of its Tidelands, including the land in question, in trust to the agency created by the Act, the San Diego Unified Port District. In relevant part, Section 14 of the Act provides:

. . . The City of San Diego shall
convey to the district all its right, title
and interest in and to such pueblo lands as
lie within the tidelands and submerged lands
in the Bay of San Diego, together with any
facilities thereon, which are owned by the
City of San Diego. Thereafter the title to
such lands shall reside in the district, and
the district shall hold such lands in trust
for the uses and purposes and upon the
conditions which are declared in this act.

(Emphasis added.)

The City has proposed the construction and operation of the Complex on the Tidelands property in question and Mayor O'Connor has requested our formal opinion on this issue.

ANALYSIS

The contemplated Complex will incorporate a sizable conglomeration of facilities and accommodate a multiplicity of interests. In addition to a cultural and library structure, the Complex will accommodate a recreation center, a business and commerce center, a navigation and fisheries center, museum space, a restaurant and a bay front park. Notwithstanding the obvious suitability of many of these structures to Tidelands property, the propriety of the Complex as a whole remains to be considered.

A detailed survey of the historical functions of Tidelands property reveals that the contemplated project is appropriate. Evaluated as a whole, the Complex fosters a statewide interest in developing California's harbors. The state legislature has expressly authorized

many of the proposed functions and facilities. Finally, the Complex furthers the trust purposes of commerce, navigation, fishing and recreation.

The following citations and authorities demonstrate that the Complex should be analyzed as a whole. Viewed in its entirety, the Complex promotes the general statewide interest in developing California's harbors.

In 37 Op. Att'y Gen. 217, 221 (1961), the Attorney General accepted the use of Tidelands property for a Commerce and Maritime Museum which included a restaurant and related facilities. The legal propriety of such construction was found to be reinforced by the fact that the majority of the land would be used for a beach, a picnic ground, and other facilities specifically authorized by the statute.

In this case, many of the functions and facilities provided by the proposed Complex are statutorily sanctioned. (See discussion, *infra*). This should, therefore, operate to reinforce the propriety of the Complex as a single unit on Tidelands property.

Moreover, it does not appear to be necessary for the statutorily authorized portions of the planned Complex to constitute a particular percentage of the total facility. In *Haggerty v. City of Oakland*, 161 Cal.App.2d 407, 412 (1958) the court declared that the propriety of a banquet and convention facility on Tidelands property was not frustrated simply because the facility would be rented to organizations who were not involved in commerce. The court did not address the allocation of use between groups that furthered the trust purposes and those who did not. The inference to be drawn is that the portion of use devoted exclusively to trust purposes is irrelevant. Rather, the court's analysis suggests that Tidelands construction is appropriate where some projected uses are devoted to commerce, navigation, fishing and recreation.

Many of the proposed functions and facilities offered by the Complex are specifically authorized by statute. Since California courts give great deference to legislative determinations regarding the proper use of Tidelands, the Complex is, in large part, manifestly appropriate. *Besig v. Friend*, 463 F.Supp. 1053 (1979).

Much of the proposed purpose of the Complex is authorized by the Act. Specifically, Section 87(a)(5) states:

For the construction, reconstruction,
repair, maintenance and operation of public
buildings, public assembly and meeting
places, convention centers, parks,
playgrounds, bathhouses and bathing
facilities, recreation and fishing piers,
public recreation facilities, including but
not limited to public golf courses, and for

all works, buildings, facilities, utilities,
structures and appliances incidental,
necessary or convenient for the promotion and
accommodation of any such uses.

(Emphasis added.)

This provision conclusively authorizes several of the facilities designed within the Complex. For example, the plan includes a recreation complex housing collections on sports, arts and crafts, music, travel, cooking, gardening, and other recreational matters. Moreover, a conference center is intended, which will include a state-of-the-art teleconferencing facility with the capacity for multilingual translation. A convention and visitors bureau will be established involving programs in sales, marketing, public relations and traveling. Finally, the bay front park is unquestionably permissible.

The Complex will incorporate a business and commerce center to include publications from the Department of Commerce and a patent search area. It will also include a Chamber of Commerce International Resource Center. These items are specifically authorized by Section 87(a)(2) of the Act, which states, "For all commercial and industrial uses and purposes, and the construction, reconstruction, repair and maintenance of commercial and industrial buildings, plants and facilities."

The navigation and fisheries center, including information on fishing, nautical charts and maps, is specifically authorized under Section 87(a)(2) of the Act as "incidental, necessary, or convenient, for the promotion and accommodation of commerce and navigation."

Although not all of the intended facilities are itemized in the statute, the others clearly foster the trust purposes of commerce, navigation, fisheries and recreation. "The public uses to which Tidelands are subject are sufficiently flexible to encompass changing public needs." *Marks v. Whitney*, 6 Cal.3d 251, 259 (1971).

The Complex proposes to include a cultural and library center, a museum and a tourist center. Although such facilities are not expressly authorized by statute, the Complex may be approved if the State Lands Commission is independently satisfied that the district has reasonably determined that such a complex is necessary or convenient for the promotion and accommodation of commerce, navigation, fishing and recreation. See, 37 Op. Att'y Gen. 217, 218 (1961).

To evaluate the proper uses of Tidelands, litigation involving both Tidelands use and the application of revenue generated on Tidelands should be analogized. The revenue is imposed with the same trust as Tidelands property and may only be used to further the same purposes. *People v. City of Long Beach*, 51 Cal.2d 875, 877-8 (1959).

As noted above in 37 Op. Att'y Gen. 217, the Attorney General opined that a Commerce and Maritime Museum, a small harbor for displaying vessels of historical or educational interest, a lagoon, a

picnic area and a restaurant to be erected on Tidelands was an appropriate use. Conceding that the museum had no immediate relationship to commerce and navigation, the opinion found that the significant educational effect on people passing through was a sufficient connection to commerce and navigation. The museum would increase their enthusiasm, knowledge and active support of the trust purposes.

Participation is often the result of aroused interest. Moreover, the existence of an outstanding facility could give desirable publicity to the Port of Long Beach and the harbors of the state of California and would be of interest to the people of all the state. Already the courts have recognized the propriety of expending Tidelands trust funds for structures incidental to the promotion of a port and in furtherance of commerce and navigation. *Id.*

Undoubtedly, the Museum and the Cultural and Library facility at the proposed Complex would give desirable publicity to the Tidelands site and the harbors of the State of California. Particularly, with their accent on commerce and navigation, these facilities will strengthen the education, curiosity, and participation of tourists from all over the State of California in the objectives for which the Tidelands trust was established.

In *Haggerty*, supra, the court held that a convention center and banquet building was proper on port property. Finding that the port had already "built extensive facilities to accommodate and promote commerce and navigation, which facilities are occupied by tenants engaged in industries related to port and airport activities", the court justified the convention and banquet facilities by finding them incidental to the main purpose of promoting commerce and navigation, and necessary to the complete enjoyment of the port properties by the public.

The proposed facility will provide a place for these tenants as well as all other interested persons, to meet, exchange ideas, exhibit their products and have the functions which are necessarily incidental to such meetings. The board is given broad powers to develop the harbor area and the promotion of commerce and shipping, and the proposed facility would contribute to such development. It would be a method of advertising the advantages of the port, of special value as the facility will be located

in the very area of the port and harbor activities. *Id.*, at 413.

Here, the proposed Complex is easily defended under the reasoning in *Haggerty*. A museum, library and park with special emphasis on commerce and navigation will undoubtedly encourage those people engaged in commerce and navigation to visit the locality. Moreover, these facilities are incidental to the development of the harbor in that they are necessary to the full enjoyment of the Tidelands by the public.

It is perfectly permissible to construct upon Tidelands a facility that furthers local interests at the same time it advances statewide goals. The Complex, including the library and museum, will hopefully attract San Diegans to come to the Tidelands and take advantage of their unique offerings. Additionally, these facilities in conjunction with the tourism and visitors center will attract Californians from all over the state. Thus, the fact that the City of San Diego has an interest in the facility does not affect its propriety on Tidelands property.

In *People v. City of Long Beach*, 51 Cal.2d 875, 881 (1959), the court held that Tidelands revenue could be spent on a Y.M.C.A., which provided dorms, meals, entertainment and a game room. The Y.M.C.A. was related to the Trust purposes in that it catered to members of the Armed Services who were involved in navigation. The court stated "It is true that these purposes may also be of sufficient local concern to justify the expenditure of purely municipal funds therefor, but as purposes of the trust for commerce, navigation, and fishery they are also for the benefit of all of the people of the state and accordingly trust income may properly be devoted thereto." (Citations omitted.)

The proposed Complex promotes the main purpose of Tidelands property to cultivate and develop California's harbors. The fact that a local interest is also involved does not make such use improper.

In *Mallon v. City of Long Beach*, 44 Cal.2d 199 (1955), the court decided that profits from an oil lease on Tidelands property could not be used for purely municipal functions. In dicta, the court intimated that a city library would be an improper use of such revenue.

That case, however, is materially distinguishable from the circumstances here. In *Mallon*, the court was faced with the issue of whether Tidelands revenue could be used for "storm drains, a city incinerator, a public library, public hospitals, public parks, a fire alarm system, off street parking facilities, city streets and highways, and other expenditures . . ." The court did not consider, independently, whether a public library was inappropriate.

Doubtlessly, such things as "city streets and highways" are purely municipal affairs, not of such general statewide interest to justify the expenditure of Tidelands entrusted state funds. A library which emphasizes commerce, navigation, fishing and recreation, along with the

other facilities offered by the Complex which further the Tidelands purposes, could well have led the Mallon court to a different conclusion had that issue been squarely before it.

This is clear from the 1906 case of *Spires v. City of Los Angeles*, 150 Cal. 64, 67 (1906). In that case, a public library was held to be a statewide rather than municipal concern. The city had dedicated the property to public use forever. The city then wanted to construct a library on the dedicated land, and the plaintiff argued that a library was a municipal operation inconsistent with the dedication. Finding that the establishment of a public library was consistent with the concept of public access, the court declared:

Of course, if a municipality were undertaking to establish on this property a city hall, fire engine station, hospital or jail; endeavoring to devote the property . . . to the erection of municipal buildings or offices or structures for use in the transaction of municipal business, a different question would be presented, and there would be little hesitancy in holding that it could not do so. But using a portion of said dedicated property for a museum or art gallery or conservatory or library, designed for the recreation, pleasure, and enjoyment of the community in general, is an entirely different proposition, and is a distinction generally recognized by the authorities. (Emphasis added.)

The foregoing indicates that construction of the Complex on Tidelands is appropriate. The Complex encourages the statewide pursuit of developing California's harbors. Many of the planned facilities are statutorily approved. Finally, the Complex furthers the Trust purposes of commerce, navigation, fisheries and recreation. Therefore, the proposed Culture, Commerce and Technology Center may properly be erected on Tidelands property.

Respectfully submitted,
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APPROVED:

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